

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Public Service Cellular, Inc.)	
)	
Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama)	CC Docket No. 96-45
)	
)	DA 03-3730

COMMENTS OF CENTURYTEL OF ALABAMA, LLC

CenturyTel of Alabama, LLC (“CenturyTel”), through its attorneys, hereby offers the following Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice seeking comment in the above-referenced proceeding.¹

I. INTRODUCTION AND SUMMARY

On September 12, 2003, Public Service Cellular, Inc. (“PSC”), a commercial mobile radio service (“CMRS”) carrier, filed a petition at the FCC, pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the “Act”), seeking to be designated as an eligible telecommunications carrier (“ETC”) in non-rural areas within PSC’s authorized territory in Alabama for the purpose of receiving federal universal service support.² PSC asserts in its Petition that the Alabama Public Service Commission provided an affirmative statement declining jurisdiction over ETC designation proceedings involving CMRS carriers. In addition, PSC maintains that it satisfies all of the statutory requirements for designation as an ETC, and

¹ *The Wireline Competition Bureau Seeks Comment on the Petition of Public Service Cellular, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, Public Notice in CC Docket 96-45, DA 03-3730 (rel. Nov. 20, 2003) (“Public Notice”).

² Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, filed in CC Docket No. 96-45 on Sept. 12, 2003 (“Petition”).

that such designation serves the public interest. On November 20, 2003, the FCC sought comment on the Petition.³ The Public Notice appeared in the Federal Register on January 28, 2004.⁴

CenturyTel recently acquired exchanges in various Alabama markets from Verizon and serves primarily rural exchanges throughout the state.⁵ CenturyTel receives federal support as a non-rural, price cap carrier in Alabama.

CenturyTel urges the FCC to ensure that the designation of PSC as a competitive ETC (“CETC”) does not undermine the federal universal service fund or hinder investment in telecommunications infrastructure in Alabama. As the Commission itself recently acknowledged in the *Virginia Cellular Designation Order*, the rapid growth in high cost support to CETCs raises serious concerns about the long-term viability of the universal service fund.⁶ CenturyTel shares these concerns and has documented them in several pleadings in CC Docket 96-45. The Federal-State Joint Board on Universal Service (“Joint Board”) is expected to issue recommendations on appropriate CETC designation criteria in the coming weeks. CenturyTel urges the FCC to defer its decision to designate PSC as a CETC in Alabama until the FCC has resolved the issues raised in its *CETC High-Cost Support Proceeding*.⁷

³ Public Notice.

⁴ Public Service Cellular, Inc. for Designation as an Eligible Telecommunications Carrier in Alabama, 69 Fed. Reg. 4157 (Jan. 28, 2004).

⁵ Since August 1, 2002, CenturyTel has operated the exchanges listed in Exhibit 1 of the PSC Petition.

⁶ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, FCC 03-338, Memorandum Opinion and Order (rel. Jan. 22, 2004) (“*Virginia Cellular Designation Order*”) at ¶31.

⁷ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC*

Substantively, designation of PSC as a CETC would disserve the public interest in the absence of criteria designed to ensure that carriers receiving comparable support undertake comparable obligations. PSC's Petition should be rejected for a number of reasons: it fails to justify the designation requested; the increasing number of CETC petitions threatens to undermine support mechanisms and therefore the ILEC's ability to provide service; PSC does not propose to provide comparable service for comparable support; and it does not otherwise explain how grant of this designation will benefit the public. As the FCC has acknowledged, the presence of a competitor in the market is not itself sufficient justification for providing federal support. Therefore, in the event that the Commission grants PSC's Petition, the Commission should impose conditions on its grant similar to those imposed in the *Virginia Cellular Designation Order*.

II. DESIGNATION OF PSC AS A CETC BEFORE THE FCC RESOLVES THE ISSUES RAISED IN THE JOINT BOARD PROCEEDING IS PREMATURE.

In the recently released *Virginia Cellular Designation Order*, the Commission acknowledged that the rapid growth in high cost support to CETCs raises serious concerns about the long-term viability of the universal service fund.⁸ These issues also have been raised in the *CETC High-Cost Support Proceeding* in which the FCC requested that the Joint Board review and provide recommendations on the FCC's rules relating to high-cost support in study areas being served by competitive ETCs. Specifically, the Commission asked the Joint Board to make recommendations concerning the proper criteria for the increasing designations of CETCs.⁹ In addition, the Commission requested that the Joint Board review the Commission's methodology

Designation Process, Public Notice, FCC 03J-1, CC Docket No. 96-45 (rel. Feb. 7, 2003) ("Joint Board PN").

⁸ *Virginia Cellular Designation Order* at ¶31.

⁹ *Federal-State Joint Board on Universal Service*, Order, 17 FCC Rcd 22642 (2002).

for calculating support for CETCs in competitive study areas and for determining the location of a “line” served by a mobile wireless service provider.¹⁰

In the *CETC High-Cost Support Proceeding*, CenturyTel urged the FCC to take into consideration the Joint Board’s recommendations in that proceeding before designating any new CETCs.¹¹ As CenturyTel has explained, the entire designation process is under review by the Joint Board and the FCC in light of the numerous changes that have occurred in the telecommunications marketplace.¹² In addition, the CETC designation process was the subject of hearings before the United States Senate and House of Representatives last year. Upon release of the Joint Board’s recommendations, the Commission must act within a year. Therefore, the Commission should defer the ETC designation of PSC and others¹³ until it resolves the issues raised in the *CETC High-Cost Support Proceeding*.

III. DESIGNATION WOULD NOT SERVE THE PUBLIC INTEREST BECAUSE IT THREATENS LONG-TERM VIABILITY OF UNIVERSAL SERVICE.

A. Designation of ETCs Without Meaningful Obligations to Provide Service Comparable to that of the ILEC Only Burdens the Fund and Undermines the ILEC’s Ability to Provide Service.

Designation of PSC as an ETC does not serve the public interest because the costs associated with granting PSC CETC status may outweigh the benefits. In the past, many state commissions have designated CETCs in areas served by non-rural telephone companies merely

¹⁰ *Id.*

¹¹ CenturyTel Comments filed in CC Docket No. 96-45 on May 5, 2003 at 4.

¹² CenturyTel Comments filed in CC Docket No. 96-45 on Feb. 10, 2003; Application for Review, or Alternatively, Petition for Reconsideration of CenturyTel of Eagle, Inc. filed in CC Docket No. 96-45 on Dec. 17, 2002.

¹³ The impact of these designation proceedings grows in magnitude as CenturyTel faces new CETC designations in multiple states, often accompanied by requests for changes to the CETCs’ local service areas so that they do not have to serve the ILEC’s entire rural study area.

because the petitioner asserts that its designation will promote competitive entry. As an initial matter, CenturyTel disagrees that this designation would increase competition. Indeed, PSC entered the market without the benefit of universal service support. As a commissioner of the Louisiana Public Service Commission recently commented in a motion to deny another ETC application in that state, “if the current market prices in the cellular marketplace provide a sufficient return for the services rendered, there is no need for USF support.”¹⁴ Similarly, PSC has failed to demonstrate that support is necessary to maintain rates that are affordable and reasonably comparable or competitive with the ILEC’s. Moreover, the promotion of competitive entry is not a sufficient justification for granting support.¹⁵ The FCC has made clear in the *Virginia Cellular Designation Order* that both the FCC and the states have an ongoing obligation to evaluate whether the designation of an additional ETC serves the public interest, even in non-rural markets.¹⁶

Competition is not one of the goals of Section 254 of the Communications Act of 1934, as amended, (the “Act”).¹⁷ However, Section 254 does require that support be “sufficient” and “predictable.”¹⁸ With the increasing demands on universal service support by CETCs, there is widespread concern that the growth of the universal service fund may be inadequate to ensure the continued provision of “sufficient” support. Indeed, the number of carriers being designated as ETCs and the amount of support they receive are escalating. As the FCC noted in the *Virginia Cellular Designation Order*, while three CETCs received approximately \$2 million in high cost

¹⁴ Minutes from Open Session of the Louisiana Public Service Commission on Jan. 14, 2004 in docket U-27174 (“Louisiana PSC Minutes”).

¹⁵ *Virginia Cellular Designation Order* at ¶4.

¹⁶ *Id.* at ¶27.

¹⁷ 47 U.S.C. § 151 *et seq.*

¹⁸ 47 U.S.C. § 254(b)(5).

support in the first quarter of 2001, 112 CETCs were projected to receive approximately \$32 million in the fourth quarter of 2003. High-cost support for ETCs is expected to continue ballooning as wireless providers nationwide seek competitive ETC status. The FCC has to take immediate action to get a handle on this problem. The most viable short-term remedy is to halt the designation of additional ETCs until the FCC has resolved the issues raised in the *CETC High-Cost Support Proceeding*. Moreover, the subsidizing of carriers whose costs and service levels are far below those of the ILEC only harms consumers, threatening the ILEC's ability to continue to invest in high-cost markets.

B. The Increasing Number of CETC Petitions in Non-Rural Study Areas Threatens to Undermine Interstate Access Support under CALLS.

As CenturyTel previously has noted in comments in this proceeding, the increasing number of CETC applications in non-rural areas has the potential to unravel the CALLS Plan and harm customers through rate increases for wireline service.¹⁹ As a price cap carrier in Alabama, CenturyTel receives interstate access support ("IAS"). CenturyTel urges the Commission to review the impact on the IAS fund of multiple CETCs receiving high-cost support. In a state like Alabama, the properties have rural characteristics with respect to low customer density and require significant investment in infrastructure, even though the study areas that CenturyTel serves were registered by Verizon as non-rural. In order to avoid rate increases, federal support is necessary to improve the plant and to better serve customers.

The Commission adopted the CALLS plan in an effort to reduce long distance rates, lower interstate access charges, and eliminate the CCLC ("carrier common line charge")

¹⁹ CenturyTel Comments filed in CC Docket No. 96-45 on Feb. 24, 2003.

and the PICC (“presubscribed interexchange carrier charge”).²⁰ Because IAS support is capped at \$650 million, however, when a CETC receives IAS support, there is an offsetting reduction in support for the price cap incumbent. CenturyTel estimates that, if all the CMRS carriers that applied for CETC status were so designated, ILECs would receive only 59 cents of every dollar of interstate access support that was intended for them under the CALLS plan. As a result, IAS to ILECs would be reduced from \$650 million to \$384 million. As described above, such a reduction in support is not the result of competition and will only discourage carriers from investing in telecommunications infrastructure, which will directly impact consumers.

Since the *CALLS Order* was adopted in May 2000, there has been a significant increase in the number of ETC petitions in non-rural areas, and each additional ETC reduces the amount of IAS support available to other carriers. The Commission, however, has not made any modifications to the CALLS Plan to compensate for the increased pressures on the IAS fund. In the short term, there appears to be no sign of a decrease in the number of CETC applications, in part, because the present universal service system imposes only minimal eligibility requirements. The Commission should thoroughly examine the impact of multiple CETC designations on the CALLS Plan before designating any additional CETCs in areas served by recipients of IAS.

²⁰ *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC DOCKET No. 96-262 and 94-1; Report and Order in CC Docket No. 99-249; Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000).

IV. DESIGNATIONS SHOULD BE MADE CONDITIONAL TO ENSURE SUPPORT IS USED FOR THE PURPOSE FOR WHICH IT WAS INTENDED.

A. CETCs Should Have the Same Obligations as the ILEC to Serve Customers in Supported Areas.

As the Commission considers the issues raised in the *CETC High Cost Support Proceeding*, it also should evaluate the impact of the regulatory disparities that exist between wireline and wireless ETCs. CMRS carriers, in particular, enjoy numerous freedoms from regulation which allow them to avoid many of the regulatory costs ILECs incur; yet wireless CETCs receive the same level of support as the ILEC. For example, CMRS carriers are not typically subject to the same service quality, reliability, availability, equal access,²¹ and customer service requirements that are imposed on wireline carriers.²² They are not rate regulated and usually have no obligation to offer any basic calling plan at a rate deemed affordable by the state, while the ILEC is usually heavily constrained in its end-user pricing. Without such similar obligations, Alabama wireless customers would not enjoy the benefits that are intended to flow from universal service subsidies. As a commissioner of the Louisiana Public Service Commission noted in a motion to deny Centennial's ETC designation application, if Centennial were granted ETC status, it would be permitted to receive universal service support without the concomitant obligation to reinvest in the infrastructure of its service territory.²³

²¹ In a competitive environment, CenturyTel maintains that no carrier should be subject to equal access obligations; however, to the extent that ILECs remain subject to such rules, their competitors also should be required to provide interexchange carriers equal access.

²² Section 332(c)(3) of the Act provides, in relevant part, that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services." 47 U.S.C. § 332(c)(3).

²³ Louisiana PSC Minutes.

As CenturyTel has advocated previously, a CETC should be required to comply with the same state requirements as the carrier-of-last-resort or the ILEC serving the area for which the CETC seeks universal service support, so the support is used to achieve anticipated public benefits.²⁴ Subjecting CETCs and ILECs to different rules inures an unfair competitive advantage to CETCs without doing anything to advance universal service or ensure that support is used for that intended purpose. Accordingly, PSC should be required to meet the same service standards and affordability requirements as the ILEC.

B. The Commission Should Require CETCs to Justify the Support Based on Their Costs, and Require the States to Implement a System to Verify How CETCs Use Universal Service Support.

IAS is designed to compensate price cap LECs for the interstate portion of their loop costs. As alluded to above, however, the Commission's current rules do not require CETCs to demonstrate their costs or how their costs relate to the support they receive. To ensure that support is administered responsibly and in accordance with the goals of the Act and the Commission's rules, the Commission should demand that CETCs demonstrate that their costs justify the support that they seek.²⁵ In addition, the Commission should require the states to employ a mechanism by which they can verify that universal service funds being distributed to CETCs are, in fact, being used for the purpose intended. The FCC and the states must hold CETCs accountable to the public interest goals of universal service by requiring them to demonstrate that they used the funds to provide, maintain, and upgrade basic covered services in the state. Only then will the Commission be able to conclude whether support is being used for the purpose for which it is intended in accordance with Section 254 of the Act.

²⁴ See, e.g., Letter from Karen Brinkmann to Secretary Dortch filed November 18, 2003 (Notice of *Ex Parte* Presentation in CC Docket No. 96-45) at 5.

²⁵ Louisiana PSC Minutes.

V. THE COMMISSION SHOULD NOT GRANT THE PSC PETITION WITHOUT APPROPRIATE CONDITIONS.

CenturyTel applauds the Commission for imposing conditions on its approval of Virginia Cellular's ETC designation. Pursuant to the *Virginia Cellular Designation Order*, Virginia Cellular must submit documentation on an annual basis detailing its progress in building out its service to the areas in which it has been designated, the number of consumer complaints received per 1,000 mobile handsets, and the number of requests for service from potential customers that were unfulfilled for the past year.²⁶ As a wireless ETC applicant, PSC is no different from Virginia Cellular in this regard. Likewise, Alabama customers are no different from Virginia customers, and they deserve the same consumer protections as well as the assurance that federal universal service funds are being used for the intended purpose.

CenturyTel nevertheless maintains that the ETC designation conditions should be even more rigorous. As noted above, CETCs and ILECs should be subject to all the same requirements that are designed to ensure access to high-quality, affordable telecommunications services for all Americans. For example, PSC should have the same obligation as CenturyTel to serve all the customers in supported areas at an affordable rate (as defined by the state). In addition, PSC should comply with the same regulations and reporting requirements as the ILECs with respect to service quality, reliability, availability, equal access, and customer service.

VI. CONCLUSION

For the foregoing reasons, CenturyTel urges the FCC to defer its decision in this proceeding until the Joint Board provides recommendations in the *CETC High-Cost Support Proceeding*. The issues raised in that proceeding have national implications affecting the federal universal service fund that the FCC must first address before designating any additional ETCs.

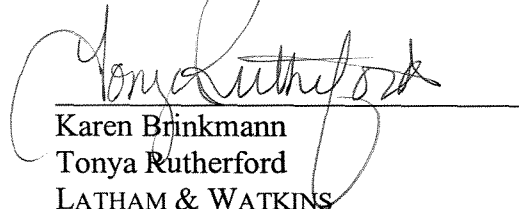
²⁶ *Virginia Cellular Designation Order* at ¶46.

Increasing numbers of CETCs and the amount of support they receive threaten to undermine the viability of universal service generally and interstate access support under CALLS, in particular. If a new designation is granted, it should be conditioned on the CETC providing comparable service at the same rate as other regulated carriers and meeting the same service quality, reliability, availability, and customer service standards as the carrier-of-last-resort.

John F. Jones
Vice President, Federal Government Relations
CENTURYTEL, INC.
100 Century Park Drive
Monroe, Louisiana 71203
(318) 388-9000

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Respectfully submitted,
CENTURYTEL, INC.



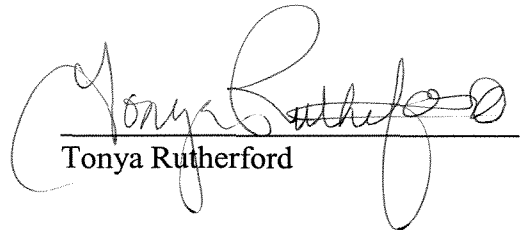
Karen Brinkmann
Tonya Rutherford
LATHAM & WATKINS
Suite 1000
555 Eleventh Street, N.W.
Washington, D.C. 20004-1304
(202) 637-2200

Counsel for CENTURYTEL, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments were sent by 1st Class US mail, this 9th day of February 2004, to:

Michael K. Kurtis
Jerome K. Blask
Kurtis & Associates, P.C.
1000 Potomac Avenue, N.W.
Suite 200
Washington, D.C. 20007



Tonya Rutherford